

1 DAVID C. SHONKA
Acting General Counsel
2 MICHAEL E. TANKERSLEY
GREGORY A. ASHE
3 Federal Trade Commission
600 Pennsylvania Avenue NW
4 Washington, DC 20850
Telephone: 202-326-2991 (Tankersley)
5 Telephone: 202-326-3719 (Ashe)
Facsimile: 202-326-3768
6 Email: mtankersley@ftc.gov, gashe@ftc.gov

7 DAYLE ELIESON
United States Attorney
8 BLAINE T. WELSH
Assistant United States Attorney
9 Nevada Bar No. 4790
501 Las Vegas Blvd. South, Suite 1100
10 Las Vegas, Nevada 89101
Phone: (702) 388-6336
11 Facsimile: (702) 388-6787

12 Attorneys for Plaintiff

13 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

14 **FEDERAL TRADE COMMISSION,**

15 Plaintiff,

16 v.

17 **OMICS GROUP INC., *et al.*,**

18 Defendants.

CV-S-2:16-02022-GMN (VCF)

19 **FTC'S REPLY IN SUPPORT OF PLAINTIFF'S**
20 **MOTION TO DETERMINE THE SUFFICIENCY OF**
21 **ANSWERS TO REQUESTS FOR ADMISSION**
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1 Defendants, in their Opposition to the Federal Trade Commission's ("FTC's") motion to
2 determine the sufficiency of answers to requests for admission (DE 70), do not dispute that the
3 responses by Defendant OMICS Group Inc. ("OMICS") do not comply with Rule 36. Instead,
4 Defendants' opposition is based entirely on the contention that the Court should not remedy this
5 Defendant's failure to comply because the FTC's has not shown "any refusal by Defendants to
6 provide responses," and failed to communicate in good faith. *Id.* at 5, These assertions are belied
7 by the facts.

8 First, the chronology of these requests for admission shows that the Defendant OMICS
9 has, in fact, responded twice -- albeit improperly -- and has stood-by those responses:

- 10 • Defendants received these requests for admissions three months ago, on December 21,
11 2017.
- 12 • The responses at issue are Defendant OMICS's *second* response, dated January 30, 2018.
13 OMICS's initial responses, dated January 19, 2018, denied every request. After a
14 telephone conference in which Plaintiff challenged these denials, OMICS amended its
15 responses but continued to resist admitting the items listed in Plaintiff's motion.
- 16 • On February 2, 2018, Plaintiff sent an email detailing problems with the amended
17 responses (DE 66-1, Att. 4)
- 18 • Twenty-five days passed before Plaintiff filed the motion to determine the sufficiency of
19 the January 30 responses -- during which Defendant OMICS did not revise its January 30
20 response or justify its answers.

21 Thus, Defendant OMICS has provided two rounds of responses, each with a certification under
22 Fed. R. Civ. P. 26(g)(1). It has also had ample time and opportunity to withdraw the January 30
23 response and comply with Rule 36.
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1 Second, Defendants' assertion that the FTC failed to engage in "good faith
2 communications" (DE 70, at 5), is false. This motion concerns requests for admission on which
3 Defendant OMICS has given express denials, *twice*. Plaintiff moved to compel production of
4 records only after sending Defendants' counsel a detailed list of exceptions to Defendants'
5 amended responses (DE 66-1 ¶ 7) and after Defendants had weeks to provide compliant
6 responses -- but failed to do so. *Id.* Defendants' contention that "good faith" requires that
7 Plaintiff wait indefinitely before challenging such responses is specious. Because discovery in
8 this action concludes on March 22, and dispositive motions are due by April 23, Plaintiff's
9 motion to secure proper responses to discovery served in December is plainly timely.

10 Contrary to characterization in Defendants' opposition, the record show that Defendants
11 have not taken their discovery obligations seriously, have disregarded deadlines, have given
12 indefensible responses, and have offered hollow assurances when called to remedy for their
13 misconduct. Defendant OMICS's inability to defend its responses to the Third Requests for
14 Admissions on the merits is another example of these failures.
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CONCLUSION

For the reasons set forth in Plaintiffs' motion, the Court should grant Plaintiffs' Motion To Determine The Sufficiency Of Answers To Requests For Admission, and deem requests for admission 75.2, 76, 76.1, 76.2, 77, 77.1, 77.2, 78, 78.1, 78.2, 79, 79.1, 79.2, 80.2, 81.2, 82.2, 83, 84, 84.1, 84.2, 85, 85.1, 86.2, 87, 87.1, 87.2, 88.1, 88.2, and 89.2 admitted.¹

Dated: March 23, 2018

Respectfully submitted,

DAVID C. SHONKA
Acting General Counsel

/s/ Michael E. Tankersley
IOANA RUSU GORECKI
GREGORY A. ASHE
MICHAEL E. TANKERSLEY
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20850
Telephone: 202-326-2077 (Gorecki)
Telephone: 202-326-3719 (Ashe)
Telephone: 202-326-2991 (Tankersley)
Facsimile: 202-326-3768
Email: igorecki@ftc.gov, gashe@ftc.gov,
mtankersley@ftc.gov

DAYLE ELIESON
United States Attorney
BLAINE T. WELSH
Assistant United States Attorney
Nevada Bar No. 4790
501 Las Vegas Blvd. South, Suite 1100
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Facsimile: (702) 388-6787
Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

¹ Defendants conclude their opposition with a sentence requesting that they be allowed to amend the responses to pertain to all Defendants. (DE 70, at 5) Defendants, however, have not filed a motion or shown the foundation for such relief. Moreover, a motion for such relief would be both untimely and futile as the answers the co-Defendants propose to adopt do not comply with Rule 36 for the reasons detailed in Plaintiff's motion.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 23, 2018, a true and correct copy of **FTC’S
FTC’S REPLY IN SUPPORT OF PLAINTIFF’S MOTION TO MOTION TO
DETERMINE THE SUFFICIENCY OF ANSWERS TO REQUESTS FOR ADMISSION**
was filed electronically with the United States District Court for the District of Nevada using the
CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF
system.

/s/Michael E. Tankersley
Attorney for Plaintiff Federal Trade Commission